

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 422 be amended to read as follows:

- 1 Page 31, between lines 36 and 37, begin a new paragraph and insert:
- 2 "SECTION 49. IC 35-50-2-2, AS AMENDED BY P.L.224-2003,
- 3 SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 2004]: Sec. 2. (a) The court may suspend any part of a
- 5 sentence for a felony, except as provided in this section or in section
- 6 2.1 of this chapter.
- 7 (b) With respect to the following crimes listed in this subsection, the
- 8 court may suspend only that part of the sentence that is in excess of the
- 9 minimum sentence, unless the court has approved placement of the
- 10 offender in a forensic diversion program under IC 11-12-3.5:
- 11 (1) The crime committed was a Class A or Class B felony and the
- 12 person has a prior unrelated felony conviction.
- 13 (2) The crime committed was a Class C felony and less than
- 14 seven (7) years have elapsed between the date the person was
- 15 discharged from probation, imprisonment, or parole, whichever is
- 16 later, for a prior unrelated felony conviction and the date the
- 17 person committed the Class C felony for which the person is
- 18 being sentenced.
- 19 (3) The crime committed was a Class D felony and less than three
- 20 (3) years have elapsed between the date the person was
- 21 discharged from probation, imprisonment, or parole, whichever is
- 22 later, for a prior unrelated felony conviction and the date the
- 23 person committed the Class D felony for which the person is
- 24 being sentenced. However, the court may suspend the minimum
- 25 sentence for the crime only if the court orders home detention
- 26 under IC 35-38-1-21 or IC 35-38-2.5-5 instead of the minimum
- 27 sentence specified for the crime under this chapter.
- 28 (4) The felony committed was:
- 29 (A) murder (IC 35-42-1-1);
- 30 (B) battery (IC 35-42-2-1) with a deadly weapon or battery

- 1 causing death;
- 2 (C) sexual battery (IC 35-42-4-8) with a deadly weapon;
- 3 (D) kidnapping (IC 35-42-3-2);
- 4 (E) confinement (IC 35-42-3-3) with a deadly weapon;
- 5 (F) rape (IC 35-42-4-1) as a Class A felony;
- 6 (G) criminal deviate conduct (IC 35-42-4-2) as a Class A
- 7 felony;
- 8 (H) child molesting (IC 35-42-4-3) as a Class A or Class B
- 9 felony;
- 10 (I) robbery (IC 35-42-5-1) resulting in serious bodily injury or
- 11 with a deadly weapon;
- 12 (J) arson (IC 35-43-1-1) for hire or resulting in serious bodily
- 13 injury;
- 14 (K) burglary (IC 35-43-2-1) resulting in serious bodily injury
- 15 or with a deadly weapon;
- 16 (L) resisting law enforcement (IC 35-44-3-3) with a deadly
- 17 weapon;
- 18 (M) escape (IC 35-44-3-5) with a deadly weapon;
- 19 (N) rioting (IC 35-45-1-2) with a deadly weapon;
- 20 (O) dealing in cocaine, a narcotic drug, or methamphetamine
- 21 (IC 35-48-4-1) if the court finds the person possessed a
- 22 firearm (as defined in IC 35-47-1-5) at the time of the offense,
- 23 or the person delivered or intended to deliver to a person under
- 24 eighteen (18) years of age at least three (3) years junior to the
- 25 person and was on a school bus or within one thousand
- 26 (1,000) feet of:
 - 27 (i) school property;
 - 28 (ii) a public park;
 - 29 (iii) a family housing complex; or
 - 30 (iv) a youth program center;
- 31 (P) dealing in a schedule I, II, or III controlled substance
- 32 (IC 35-48-4-2) if the court finds the person possessed a
- 33 firearm (as defined in IC 35-47-1-5) at the time of the offense,
- 34 or the person delivered or intended to deliver to a person under
- 35 eighteen (18) years of age at least three (3) years junior to the
- 36 person and was on a school bus or within one thousand
- 37 (1,000) feet of:
 - 38 (i) school property;
 - 39 (ii) a public park;
 - 40 (iii) a family housing complex; or
 - 41 (iv) a youth program center;
- 42 (Q) an offense under IC 9-30-5 (operating a vehicle while
- 43 intoxicated) and the person who committed the offense has
- 44 accumulated at least two (2) prior unrelated convictions under
- 45 IC 9-30-5; ~~or~~
- 46 (R) aggravated battery (IC 35-42-2-1.5);

1 **(S) an offense that is a felony under IC 3-14-2 (vote**
 2 **fraud); or**

3 **(T) an offense that is a felony under IC 3-14-3**
 4 **(interference with free and equal elections).**

5 (c) Except as provided in subsection (e), whenever the court
 6 suspends a sentence for a felony, it shall place the person on probation
 7 under IC 35-38-2 for a fixed period to end not later than the date that
 8 the maximum sentence that may be imposed for the felony will expire.

9 (d) The minimum sentence for a person convicted of voluntary
 10 manslaughter may not be suspended unless the court finds at the
 11 sentencing hearing that the crime was not committed by means of a
 12 deadly weapon.

13 (e) Whenever the court suspends that part of an offender's (as
 14 defined in IC 5-2-12-4) sentence that is suspendible under subsection
 15 (b), the court shall place the offender on probation under IC 35-38-2
 16 for not more than ten (10) years.

17 (f) An additional term of imprisonment imposed under
 18 IC 35-50-2-11 may not be suspended.

19 (g) A term of imprisonment imposed under IC 35-47-10-6 or
 20 IC 35-47-10-7 may not be suspended if the commission of the offense
 21 was knowing or intentional.

22 (h) A term of imprisonment imposed for an offense under
 23 IC 35-48-4-6(b)(1)(B) may not be suspended.

24 SECTION 50. IC 35-50-2-7, AS AMENDED BY P.L.98-2003,
 25 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2004]: Sec. 7. (a) A person who commits a Class D felony
 27 shall be imprisoned for a fixed term of one and one-half (1 1/2) years,
 28 with not more than one and one-half (1 1/2) years added for
 29 aggravating circumstances or not more than one (1) year subtracted for
 30 mitigating circumstances. In addition, he may be fined not more than
 31 ten thousand dollars (\$10,000).

32 (b) Notwithstanding subsection (a), if a person has committed a
 33 Class D felony, the court may enter judgment of conviction of a Class
 34 A misdemeanor and sentence accordingly. However, the court shall
 35 enter a judgment of conviction of a Class D felony if:

36 (1) the court finds that:

37 (A) the person has committed a prior, unrelated felony for
 38 which judgment was entered as a conviction of a Class A
 39 misdemeanor; and

40 (B) the prior felony was committed less than three (3) years
 41 before the second felony was committed;

42 (2) the offense is domestic battery as a Class D felony under
 43 IC 35-42-2-1.3; ~~or~~

44 (3) the offense is possession of child pornography
 45 (IC 35-42-4-4(c));

46 **(4) the offense is a felony under IC 3-14-2 (vote fraud); or**

1 **(5) the offense is a felony under IC 3-14-3 (interference with**
2 **free and equal elections).**

3 The court shall enter in the record, in detail, the reason for its action
4 whenever it exercises the power to enter judgment of conviction of a
5 Class A misdemeanor granted in this subsection."

6 Renumber all SECTIONS consecutively.

(Reference is to SB 422 as printed January 27, 2004.)

Senator LAWSON C